



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0255]

RIN 1625-AA08

Special Local Regulation, 2017 Cataño Offshore , San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of San Juan Harbor in San Juan, Puerto Rico during the 2017 Cataño Offshore, a high-speed race event. The special local regulation is necessary to ensure the safety of race participants, participant vessels, spectators, and the general public during the event. This regulation establishes three regulated areas: a race area; a buffer zone; and a spectator area. This special local regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the race area or buffer zone and prohibits vessels from transiting at speeds that cause wake within the spectator area unless authorized by the Captain of the Port San Juan or a designated representative.

**DATES:** This rule is effective from 11:00 a.m. through 4 p.m. on April 2, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0255 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Efrain Lopez, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289-2097, e-mail Efrain.Lopez1@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the required event documentation until March 22, 2017, leaving insufficient time before the event to publish an NPRM and to receive public comment in order to complete the rulemaking process. For that reason, it would be impracticable to publish an NPRM.

For the reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

### **III. Legal Authority and Need for Rule**

The legal basis for this rule is the Coast Guard's authority to establish special local regulations is 33 U.S.C. 1233. The purpose of the rule is to ensure safety of the event participants, the general public, and the navigable waters of San Juan Harbor in the vicinity of San Juan, Puerto Rico during the 2017 Cataño Offshore race event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation on certain waters of San Juan Harbor in San Juan, Puerto Rico during the 2017 Cataño Offshore race event. The race is scheduled to take place from 11 a.m. to 4 p.m. on April 2, 2017. Approximately 30 high-speed boats and personal watercraft are expected to participate in the race. The special local regulation will create three regulated areas: (1) a race area; (2) a buffer zone; and (3) a spectator area. Within the race area and buffer zone, non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the COTP San Juan or a designated representative. Within the spectator area, all persons and vessels are prohibited from traveling in excess of wake speed without obtaining permission from the COTP San Juan or a designated representative. If authorization is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive Orders, and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

The economic impact of this rule is not significant for the following reasons: (1) the special local regulation will be enforced for only five hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the race area without authorization from the COTP San Juan or a designated representative, the vessel traffic will be able to safely transit around the regulated areas, which will impact certain waters of San Juan Harbor in San Juan, Puerto Rico; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the race area and buffer zone or transit in excess of wake speed in the spectator zone if authorized by the COTP San Juan or a designated representative; and (4) the Coast Guard

will provide advance notice of the special local regulation to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### **C. Collection of Information**

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### **D. Federalism and Indian Tribal Governments**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

### **E. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **F. Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that will prohibit non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within a limited race area and will also prohibit persons and vessels from transiting at more than wake speed within a limited spectator area during a race event lasting five hours. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### **G. Protest Activities**

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,  
Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T07–0255 to read as follows:

§ 100.35T07-0255 Special Local Regulations; 2017 Cataño Offshore, San Juan Harbor, San Juan, PR.

(a) Location. The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) Race area. All waters of San Juan Harbor encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°27.915'N, 066°07.756'W; thence south to Point 2 in position 18°27.164'N, 066°07.634'W; thence south to Point 3 in position 18°26.875'N, 066°07.451'W; thence east to Point 4 in position 18°26.938'N, 066°06.645'W; thence northeast to point 5 in position 18°27.069'N, 066°06.535'W; thence northwest to point 6 in position 18°28.005'N, 066°07.628'W; thence southwest back to origin.

(2) Buffer zone. All waters of San Juan Harbor encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°28.170'N, 066°07.588'W; thence west to Point 2 in position 18°27.943'N, 066°08.010'W; thence south to Point 3 in position 18°27.132'N, 066°07.734'W; thence south to Point 4 in position 18°26.733'N, 066°07.488'W;



thence east to point 5 in position 18°26.768'N, 066°06.578'W; thence northeast to point 6 in position 18°27.168'N, 066°06.357'W; thence northwest to Point 7 in position 18°27.510'N, 066°06.954'W; thence northwest to Point 8 in position 18°27.611'N, 066°07.098'W; thence north to Point 9 in position 18°27.779'N, 066°07.123'W; thence northwest to point 10 in position 18°27.846'N, 066°07.182'W; thence north to point 11 in position 18°27.924'N, 066°07.190'W; thence northwest to Point 12 in position 18°27.961'N, 066°07.256'W; thence southwest to Point 13 in position 18°27.952'N, 066°07.312'W; thence northwest to Point 14 in position 18°27.967'N, 066°07.343'W; thence north to point 15 in position 18°28.003'N, 066°07.335'W; thence northwest to point 16 in position 18°28.071'N, 066°07.399'W; thence southwest to Point 17 in position 18°28.055'N, 066°07.433'W; thence northwest back to origin.

(3) Spectator area. All waters of San Juan Harbor excluding the race area and buffer zone, encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°26.933'N, 066°07.824'W; thence southeast to Point 2 in position 18°26.705'N, 066°07.648'W; thence northwest back to origin.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) Regulations. (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless authorized by the Captain of the Port San Juan or a designated representative.

(2) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone unless authorized by the Captain of the

Port San Juan or a designated representative.

(3) All persons and vessels are prohibited from transiting in excess of wake speed in the spectator area, unless authorized by the Captain of the Port San Juan or a designated representative.

(4) Persons and vessels desiring to enter, transit through, anchor in, remain within or transit in excess of wake speed within any of the regulated areas may contact the Captain of the Port San Juan by telephone at (787) 289-2041, or a designated representative via VHF-FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(5) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

(d) Enforcement period. This rule will be enforced with actual notice from 11 a.m. until 4 p.m. on April 2, 2017, unless sooner terminated by the Captain of the Port San Juan.

Dated: March 27, 2017.

R. W. Warren,  
Captain, U.S. Coast Guard,  
Captain of the Port San Juan.

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